

GUIDELINES FOR REVIEW OF APPLICATIONS FOR CONSERVATION TAX CREDITS
NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
REVISED 2008

A. Background for Public Benefit Guidelines

To qualify for the financial incentives offered by the North Carolina Conservation Tax Credit (CTC), donations must fall under a number of criteria. Consult General Statutes 105-130.34 and 105-151.12 for the specific requirements of the CTC Program. Per these statutes (revised 2007), public benefit must be provided in one or more of the following categories:

1. Public beach access or use
2. Public access to public waters or trails
3. Fish and wildlife conservation
4. Forestland or farmland conservation
5. Watershed protection
6. Conservation of natural areas as that term is defined in G.S. 113A-164.3(3)
7. Conservation of natural or scenic river areas as those terms are used in G.S. 113A-34
8. Conservation of predominantly natural parkland
9. Historic landscape conservation

Certification is required by the Department of Environment and Natural Resources stating that the property donated is suitable for one or more of the valid public benefits listed above. To be eligible for this credit, the interest in real property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions pursuant to G.S. 105-130.9.

Participating DENR Divisions are assigned categories that are pertinent to their expertise for reviewing purposes. Responsibility for reviewing CTC applications relevant to *fish and wildlife conservation* and, in some cases, *public access to public waters or trails* is delegated to the Wildlife Resources Commission. There may be some instances in which other categories would be applicable.

B. General Program Guidelines for Certification for Conservation Tax Credit

The Wildlife Resources Commission (WRC) will review project applications with two basic objectives. The first will be to determine if the project comprises a public benefit in the form of fish and wildlife conservation. To meet this criterion, the conservation values upon implementation of the easement or fee simple donation must be equal to or greater than the conservation value of the property prior to the transaction. If values are diminished, the application will receive a negative evaluation. The second objective is to establish if the project will provide the benefits in perpetuity. If either of these is negative, then the application will not be supported by WRC.

The WRC will consider factors that may qualify a donation for public benefit, as well as the factors that can disqualify a donation. Although public access criteria do not necessarily apply to all situations relating to the *fish and wildlife conservation* category, there will be instances in which this will be considered. Some uses of properties that are being considered on this basis include public access for recreation (boating, hunting, and fishing), scientific research and wildlife observation.

Applications to be reviewed will include both fee simple donations and conservation easements. Fee simple donations have fewer issues, and previously the majority has been certified under the public access criteria for public benefit. WRC staff will examine fee simple donations on those issues that are relevant. Easements have proven more difficult to assess for public value, especially in those cases that do not include public access. In most cases, the WRC staff focuses on two criteria under

defined public benefit -- *fish and wildlife conservation*; and *public access to public waters or trails* -- in evaluating easements and applicable fee simple donations. WRC staff interprets the legislated criteria to mean public benefit for all North Carolinians, emphasizing elements that have a broad positive impact, such as protection of water quality and maintenance of habitats necessary for the long term preservation of North Carolina's native wildlife resources. WRC staff considers the following criteria as minimum guidelines for most easements, all of which must apply:

- Greater than 25 acres of contiguous priority habitat for native species (see exceptions below)
- Protection and management of habitat for priority wildlife species identified in the *North Carolina Wildlife Action Plan (NCWAP)* developed by the WRC (see website: http://www.ncwildlife.org/fs_index_07_conservation.htm).
- Limited impacts from retained commercial interests
- Provisions for stewardship in perpetuity

Size and Contiguity of Property

In most cases, WRC recognizes public benefit on tracts greater than or equal to 25 acres of contiguous, unfragmented high priority habitat. WRC will more carefully scrutinize areas of less than 25 acres, as well as larger areas with roads and multiple parcels exempted from the easement. Areas that are smaller, are discontinuous, or that have convoluted shapes are subject to intense edge effects and provide habitat value for fewer species. While the 25 acre minimum refers to contiguous area of priority habitat, an easement or fee simple donation smaller than 25 acres could be considered acceptable if one or more of the following criteria are met:

- The property is adjacent to existing conservation properties protected by fee or easement ownership, connected by high quality habitat corridors or closely clustered with other such parcels. Note that the decision will be based on the proposed/completed donation presented in the application. The *potential* of the property to be closely clustered with conservation properties is a secondary consideration. For instance, if the prospective donor has the ability to enlarge the size of the easement area through acquisition, encouragement of neighboring donations or other means, this information may be taken into account.
- The easement would protect special resources such as outstanding examples of wildlife habitats identified as priorities in the *North Carolina Wildlife Action Plan*, endangered or threatened species habitat (including state listed endangered, threatened, or special concern species), or ecologically significant natural areas.
- In cases where the natural condition of the property is other than forested land, the minimum acreage might go up or down, depending on the habitat. For instance, a 100-acre minimum may be desired for a salt marsh, but only 5 acres for high quality prairie, mountain bog or mountain bald).

Applications will be reviewed on a case-by-case basis and recommendations will be based on the total public benefit (in the form of conservation values) to be derived from the easement or fee simple donation.

Protection of Significant Wildlife Species and Important Ecological Areas

The WRC will evaluate applications to see whether priority wildlife species or habitats are protected. Applications must provide a sufficient description of the habitat (including dominant plant species composition, age, condition and surrounding land use) to facilitate evaluation. Applications authorizing actions that fragment habitat, disrupt ecological integrity, (e.g. construction of septic

tanks in conserved area) or otherwise harm significant wildlife habitats may not receive WRC support. Applications in which the landowner demonstrates the intention and ability to manage the land for wildlife benefit, where appropriate, will be looked upon favorably.

Riparian, Floodplain and Wetland Protection

Protection of the riparian area and floodplain should extend at least 300 feet landward from bank full. Terms of the easement should include keeping the floodplain and riparian area undisturbed on both sides of a stream as applicable.

WRC will evaluate applications and determine public benefit based on the size of buffer and nature of adjacent activity, to make sure that the wetlands are well protected.

Impacts of Retained Commercial Interests

At some point, potential public benefit of a donation is substantially diminished by activities which either led to the current condition of the property or are ongoing in perpetuity as part of the landowner's negotiated easement. For example, golf courses, ski facilities and other semi-developed areas provide negligible habitat, can lead to degradation of resources and the public must pay to access the area. Intensive forestry operations and excessive pine straw raking also utilize the land in such a way that native species and communities are often degraded or removed.

The WRC is not opposed to landowners profiting from their land. In fact, the leasing of hunting or fishing rights is notable in that many game species require habitats that are increasingly rare, such as wetlands, areas with periodic fire, and clean and free-flowing waters. Therefore a public conservation benefit often accrues from management for this retained commercial interest. The Conservation Tax Credit applications where commercial interests are retained will be scrutinized to ensure that the conditions of agreement will not result in degradation of the ecological value.

There is increasing interest in North Carolina in "conservation developments", "conservation golf courses", and other similar projects where a portion of the land is heavily altered while retaining open space in the remainder of the property and/or making efforts to mitigate the negative environmental impacts in the developed area. The WRC applauds and supports this effort to mitigate the impacts of development and retain some wildlife values in developed landscapes. However, we do not feel that it is an appropriate use of the Conservation Tax Credit to subsidize land uses that diminish the wildlife value of the property. Therefore, the WRC will not support Conservation Tax Credit for acres that are developed for housing, construction or infrastructure development, ski trails, golf courses or other similar land uses that degrade wildlife habitat value. *However, the WRC will evaluate the remaining "open space" acres within a conservation development on the merits of those acres.*

Provisions for Stewardship in Perpetuity

In addition to the guidelines for public benefit listed above, there is the responsibility of the recipient to manage and enforce the conditions of agreement to ensure that conservation values in the original donation are retained. The supporting legislation stipulates that the Department of Environment and Natural Resources (DENR) must certify that the donated property is suitable for one or more of the required public conservation benefits and is donated in perpetuity. Easements to recipient organizations that do not have a local presence should document the organization's ability to enforce the conditions of agreement of the easement. Local governments should also be able to demonstrate that conservation values of donation will be retained in perpetuity. Public benefit of the transaction will be lost if the conditions of agreement are not carried out in the future.

C. Working Landscape Guidelines

Farms and Forests

WRC recognizes the value of wildlife habitats provided on working farms and forests that are managed properly. Many wildlife species are dependent upon the early succession habitats provided by both farming and forestry land treatments. Management plans for perpetuity are critical for applications in this category. Retained commercial interests will require close scrutiny. Applications will be reviewed based on the same criteria described in section B – General Program Guidelines.

Subdivision Development

As discussed in Section B, the conservation values upon implementation of the easement or fee simple donation must be equal to or greater than the conservation value of the property prior to the transaction. The second objective is to establish if the project will provide the benefits in perpetuity.

Subdivision developments encompass a change in the landscape that inevitably results in creating some or all of the following: road systems, water & sewer systems, electrical facilities and oftentimes provide for recreational opportunities. Land ownership patterns also change as lots of varying sizes are created. Introduction of free-roaming pets is also a typical outcome of most developments.

Therefore, WRC does not recognize fish and wildlife conservation values following development being equal to or greater than the value prior to the development activity. No subdivision development will be considered to meet CTC requirements when evaluated as an entire tract. However, any individual parcel within a development will be reviewed under the same general guidelines described in Section B.

Golf Course Development

Applications for CTC by commercial endeavors such as golf courses will not be reviewed favorably by WRC. Land fragmentation, construction of roads, water & sewer systems and intensive manicuring of open areas results in extremely low quality fish and wildlife habitat and diminishes the previous values. Standards will be similar to those applied to subdivision developments in that any individual parcel within a golf course development will be reviewed under the same general guidelines described in Section B.